

Served: November 14, 2000

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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 7th day of September, 2000

Application of

ASIANA AIRLINES, INC.

for an amended foreign air carrier permit under
section 41301 of Title 49 of the U.S. Code

Docket OST-98-4269 - 3

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

This order grants Asiana Airlines, Inc., an amended foreign air carrier permit to authorize scheduled and charter foreign air transportation pursuant to the Air Transport Agreement between the United States of America and the Republic of Korea, signed June 9, 1998 (U.S.-R.O.K. Open Skies Agreement).

Application

By application filed August 19, 1998, Asiana requests amendment of its current foreign air carrier permit, last issued by Order 95-11-17, to authorize scheduled and charter foreign air transportation to the full extent provided for in the U.S.-R.O.K. Open Skies Agreement.¹ In support of its application, Asiana states that it has been designated under the Agreement to provide the services requested. It also states that it is substantially owned and effectively controlled by citizens of the Republic of Korea, properly licensed by its homeland, and financially and operationally qualified to conduct these operations.

We received no answers to Asiana's application.

¹ Asiana holds currently effective exemption authority to conduct these services (see Docket OST-98-3940).

Decision

We have thoroughly reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q procedures.² The public was informed of the carrier's application by notices in the Federal Register and in the Department's Weekly List of Applications filed. The notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. These announcements provided the required notice and filing opportunities. Simplified procedures are appropriate in this case, because there are no material, determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest. The authority is provided for in the U.S.-R.O.K. Open Skies Agreement, and Asiana has been designated under the Agreement to conduct the proposed operations. We also find that Asiana is operationally and financially qualified to conduct the proposed services, and that it is substantially owned and effectively controlled by citizens of the Republic of Korea.

Operational Fitness

Asiana has demonstrated that it is managerially and operationally fit to perform the foreign air transportation proposed. The carrier already has operated successfully to this country under previously issued authority. It holds effective authority from its homeland government for the operations proposed and states that it has had no safety or tariff violations in the preceding five years. The FAA has advised us that Asiana conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

Financial Fitness

Asiana has demonstrated that it is financially fit to perform the foreign air transportation proposed. It has furnished financial information and/or evidence of government backing which indicates that it can operate without jeopardizing passenger or shipper funds.

Asiana accompanied its application with a motion seeking confidential treatment under Rule 12 of its financial data summaries, stating that these materials contain sensitive commercial information which are not available to the public and could harm its competitive position in the U.S. transportation market. It also states that the materials are protected from disclosure under the Freedom of Information Act, 5 U.S.C. section 552(b)(4), which exempts "commercial or financial information obtained from a person and privileged or confidential."³

² 14 CFR 302.1701 *et seq.* Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

³ Asiana served copies of its motion on all parties. No party objected to the motion.

Under Rule 12, the Department evaluates requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (FOIA) (5 U.S.C. section 522). Under exemption 4 of the FOIA, business information may be withheld from disclosure if it is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." We find that the financial summaries contained in the confidential submissions meet the requirements of FOIA Exemption 4 and grant Asiana's request for confidential treatment of these documents.⁴

Findings and Conclusions

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue a foreign air carrier permit to the applicant in the form attached;
2. To the extent the authority conferred is the subject of a bilateral agreement, the applicant is qualified and designated by its government under the applicable agreement;
3. The applicant is fit, willing and able to perform properly the foreign air transportation described in the attached permit, and to conform to the provisions of the U.S. Code and to the Department's rules, regulations, and requirements;
4. The public interest requires that the exercise of the privileges granted by the attached permit be subject to the terms, conditions and limitations contained in and attached to this permit and to such others required by the public interest as the Department may prescribe;
5. The applicant is substantially owned and effectively controlled by nationals of its homeland;
6. The issuance of this permit does not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations;⁵ and
7. The public interest does not require an oral evidentiary hearing on this application.

⁴ Under Rule 12, this confidentiality determination becomes effective 5 days after the date of service of this order unless a petition for reconsideration, or a statement of intent to seek judicial review, is filed before the effective date.

⁵ Our finding is based on the fact that the permit issued will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Asiana Airlines, Inc.;
2. We grant the motion of Asiana Airlines, Inc., for confidential treatment of its financial data summaries;
3. We grant all motions and requests to file documents out of time, to submit additional or supplementary materials, or to withdraw pleadings;
4. To the extent not granted, the application and all motions and other requests in this docket are denied;
5. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after their submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁶ and
6. We will serve this order on the applicant and other parties in this docket.

By:

FRANCISCO J. SANCHEZ
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁶ This order was submitted for review under section 41307 of Title 49 of the U.S. Code on September 7, 2000. On November 7, 2000, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to

Foreign Air Carrier Permit Application of

ASIANA AIRLINES, INC.

Docket OST-98-4269

Flag: Republic of Korea

Federal Register Notice: 63 FR 44503, August 19, 1998

Filing Date: August 3, 1998

Authority Sought: Amendment of foreign air carrier permit, last issued by Order 95-11-17, to authorize scheduled and charter foreign air transportation to the full extent provided for in the Air Transport Agreement between the United States of America and the Republic of Korea, signed June 9, 1998 (U.S.-R.O.K. Open Skies Agreement).

Pleadings: No answers were filed.

Public Interest: The U.S.-R.O.K. Open Skies Agreement provides for the authority sought. Asiana has been designated by the Government of the Republic of Korea under the Agreement to conduct these operations.

Fitness: Asiana received its initial foreign air carrier permit in 1991. Its current permit was issued in 1995 by Order 95-11-17. Asiana holds current exemption authority to conduct the operations at issue here (see Notice of Action Taken dated June 22, 1998, in Docket OST-98-3940). The carrier is properly licensed by its homeland, has had no safety violations or fatal accidents in the last five years, has experienced management, and appears financially sound.¹ DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirement), and 129 (FAA operations specifications).

Ownership and Control: Asiana is substantially owned and effectively controlled by citizens of the Republic of Korea.

¹ Asiana accompanied its application with a motion to withhold from public disclosure its financial statements. As discussed in the attached order, we will grant the motion.

Issued By
Order 2000-11-10

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER
(as amended and reissued)

ASIANA AIRLINES, INC.

A Flag Carrier of the Republic of Korea

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation, carrying persons, property and mail, as follows:

**From a point or points behind the Republic of Korea,
via the Republic of Korea and intermediate points,
to a point or points in the United States, and beyond.**

The holder shall also be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves the Republic of Korea for purposes of carrying traffic between the United States and the Republic of Korea.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the Republic of Korea are or shall become parties.

This permit shall be effective on **November 7, 2000** . Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of the Republic of Korea (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of the Republic of Korea in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the Republic of Korea. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the Republic of Korea become parties.

The Department of Transportation has executed this permit and affixed its seal on **September 7, 2000.**

By:

FRANCISCO J. SANCHEZ
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

ATTACHMENT
Docket OST-98-4269

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (a change to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defense;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 217 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).